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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE

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IN RE:

TYCO INTERNATIONAL, LTD.

Multidistrict Securities  
Litigation

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\* No. 02-md-1335-PB

\* October 20, 2008

\* 2:00 p.m.

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TELEPHONE CONFERENCE  
BEFORE THE HONORABLE PAUL J. BARBADORO

Appearances:

Tyco International: Elizabeth F. Edwards, Esq.  
Marshal Beil, Esq.  
McGuireWoods, LLP

For Mr. Kozlowski: Robert N. Schwartz, Esq.  
Jyotin R. Hamid, Esq.  
Debevoise & Plimpton, LLP

For NJ Plaintiffs: Michael O'Mullan, Esq.  
Riker, Danzig, Scherer, Hyland &  
Perretti, LLP

For Mrs. Kozlowski: Laura L. Carroll, Esq.  
Burns & Levinson, LLP

Jason R. Marks, Esq.  
Kluger, Peretz, Kaplan & Berlin, LP

Court Reporter: Sandra L. Bailey, CSR, CM, CRR  
Official Court Reporter  
U.S. District Court  
55 Pleasant Street  
Concord, NH 03301  
(603) 225-1454

1 IN CHAMBERS

2 THE COURT: This is Judge Barbadoro. I have a  
3 court reporter here and my law clerks. I'm going to ask  
4 counsel for Tyco to identify yourself and anybody else  
5 who will be speaking during the hearing, and then we  
6 will go through the counsel for Mr. Kozlowski.

7 MS. EDWARDS: This is Elizabeth Edwards from  
8 McGuireWoods, and also on the line is my partner,  
9 Marshall Beil.

10 THE COURT: All right, and counsel for Mr.  
11 Kozlowski.

12 MR. SHWARTZ: This is Robert Shwartz and with  
13 me is Jyotin Hamid, both from Debevoise & Plimpton on  
14 behalf of Dennis Kozlowski.

15 THE COURT: All right, and apparently counsel  
16 for Mrs. Kozlowski asked to be allowed to participate.  
17 Mrs. Kozlowski is not a party to these proceedings,  
18 hasn't moved to intervene. I don't think I can give her  
19 counsel status to participate, but I did agree to allow  
20 them to listen in on the phone call. Whoever is there  
21 for Mrs. Kozlowski, if you could just identify yourself,  
22 please.

23 MR. MARKS: Sure, thank you, judge. My name  
24 is Jason Marks, Kluger, Peretz, Kaplan & Berlin in Miami  
25 for Mrs. Kozlowski.

1 MS. CARROLL: Yes, and also I'm Laura Carroll  
2 with the firm of Burns & Levinson in Boston also  
3 appearing for Mrs. Kozlowski, listening as your Honor  
4 indicated. I'm a member of the New Hampshire federal  
5 and state bar.

6 THE COURT: All right, thank you. All right,  
7 I wanted to talk to you about two things.

8 First I want to know whether the parties are  
9 interested in trying to find some practical way to  
10 resolve this matter in a way that both parties can live  
11 with, and if so, what you intend to do to try to pursue  
12 those efforts to resolve the matter practically. If you  
13 can't agree on how it should be resolved, I've scheduled  
14 a hearing on the request for preliminary injunction for  
15 next Monday I believe, and I wanted to talk to the  
16 parties about what I was expecting from them prior to  
17 the hearing.

18 Let's talk about whether there's a possibility  
19 of reaching some kind of interim agreement that would  
20 make the need for a preliminary injunction unnecessary.

21 I'll first ask Tyco's counsel. Have you given  
22 any thought to trying to explore a practical solution to  
23 this problem which would of course require compromise on  
24 your part?

25 MS. EDWARDS: Yes, your Honor, and we are

1 certainly willing to talk with Mr. Kozlowski's counsel  
2 to that end. We had a brief conversation earlier today  
3 but really didn't advance the ball in that very much.

4 THE COURT: All right, and what does Mr.  
5 Kozlowski's counsel have to say?

6 MR. SHWARTZ: Your Honor, we're open to any  
7 ideas. The conversation that Ms. Edwards and I had  
8 earlier today was not about the possibility of finding  
9 such a compromise but was about what, if anything, might  
10 be needed to make the record before your Honor rules on  
11 the motion for preliminary injunction.

12 THE COURT: Well, I've already made clear that  
13 I'm not going to enforce any kind of injunction in such  
14 a way as that would cause irreparable harm to Mr.  
15 Kozlowski if, for example, payments need to be made to  
16 keep assets from being damaged or destroyed, to engage  
17 in ordinary kinds of transactions, if there's some  
18 demonstrated need for certain monies to go to Mrs.  
19 Kozlowski for support during this period, I'm going to  
20 allow that kind of -- those kind of transfers to occur.  
21 It seems to me that the practical answer to this problem  
22 is for Mr. Kozlowski to make full and frank disclosure  
23 of his assets to Tyco, and for Tyco to reach a  
24 reasonable agreement that allows certain of those assets  
25 to be transferred to Mrs. Kozlowski, and if necessary

1 Mrs. Kozlowski could provide adequate security that in  
2 the event that it's determined that the transactions  
3 were inappropriate, that Tyco would be protected. There  
4 are practical ways to work this out, and I don't know  
5 why the parties don't want to try to pursue them.

6 Anybody want to speak?

7 MS. EDWARDS: Your Honor, this is Elizabeth  
8 Edwards. I can assure you that Tyco would be happy to  
9 try to pursue those avenues. I think as an initial  
10 matter, as your Honor just recognized, that we do need  
11 disclosure of Mr. Kozlowski's assets and any transfers  
12 that have been made so that we can have a framework to  
13 begin our discussions.

14 THE COURT: Yeah, I think that has to be a  
15 starting point because you've got an argument that  
16 you're entitled to recover probably more than whatever  
17 he's got left, and before you can agree to allow assets  
18 to be transferred you need to know how much he's got and  
19 what transfers he's proposing to make, and if he's  
20 willing to let you know what he's got and what transfers  
21 he wants to make, if he understands that by doing that  
22 that you will work with him and allow certain transfers  
23 to be made, then I think we could work something out  
24 here, but is Mr. Kozlowski willing to participate in  
25 that kind of a process?

1                   MR. SHWARTZ: Well, your Honor, we are in the  
2 process of gathering the information that we understand  
3 is responsive to the expedited discovery that your Honor  
4 ordered on Friday, and of course Ms. Edwards already has  
5 the marital settlement agreement which lays out all of  
6 the obligations that Mr. Kozlowski needs to make under  
7 the terms of his divorce settlement, and I believe it  
8 was two weeks ago today that we enumerated the then two  
9 transfers that had been made in connection with the  
10 divorce settlement and there was one other transfer that  
11 was made that same day which we advised the court and  
12 Ms. Edwards by a letter, and to the best of my knowledge  
13 there have been no other transfers in connection with  
14 the divorce since then.

15                   We understand your Honor's already recognized  
16 and I think Ms. Edwards has already acknowledged that  
17 payment of ordinary expenses and bills unrelated to the  
18 divorce are not restrained by the TRO, and we're  
19 certainly mindful of that.

20                   So I think we are in the process of getting  
21 them the information that your Honor directed and if  
22 that, you know, buys a solution to this, that would be  
23 great and we're open to it, but I'm not sure that  
24 they'll learn anything more about payments to Mrs.  
25 Kozlowski than they already have from the marital

1 settlement treatment.

2 THE COURT: No, I think what they want to know  
3 is how much has he got. If he's got 700 million let's  
4 say hypothetically, which we know he doesn't have, and  
5 they want 600 million, then they wouldn't object to some  
6 of the money being transferred I assume, right? I mean  
7 there are --

8 MR. SHWARTZ: I understand that and we're in  
9 the process of assembling what would essentially be a  
10 reasonable balance sheet, if you will, of his remaining  
11 assets which I think will give a big picture on that  
12 question.

13 THE COURT: And once they get that, assuming  
14 they can take steps to decide how reliable the  
15 information is, once they can satisfy themselves that  
16 they understand reliably what Mr. Kozlowski has, they  
17 can make reasonable judgments about what they are going  
18 to demand by way of resolving the ultimate litigation  
19 against them, and there's a reasonable chance you could  
20 resolve the whole thing.

21 Well, I can't force you to be reasonable here,  
22 either party, you've got a right to your legal remedies.  
23 You want to pursue this preliminary injunction hearing,  
24 I'm not going to stop you. I think it's a silly waste  
25 of time for you to proceed in that way, but I will

1     enforce the parties' legal rights, whatever they turn  
2     out to be.

3                 So let's talk about the hearing on Monday. I  
4     expect from Tyco a set of proposed findings and rulings  
5     with detailed citations to evidence to support the  
6     findings that Tyco is going to want me to make, and I'd  
7     like to have those by the end of the day on Friday.  
8     Will you be able to deliver those, Ms. Edwards?

9                 MS. EDWARDS: Yes, your Honor, we will.

10                THE COURT: And in particular on this  
11    likelihood of success argument, I want to see  
12    specifically what your evidence is as to what the  
13    evidence is about unfaithful acts that would -- to  
14    trigger your right to the equitable relief that you're  
15    claiming and tying that to the specific demands for  
16    return of compensation paid that you're claiming. So  
17    I'm going to need to have much more detail than I've had  
18    from you up to now if you want the preliminary  
19    injunction to continue. So, please plan on delivering  
20    that to me prior to the hearing.

21                How do the parties want to proceed with  
22    respect to the hearing? I mean, I'm prepared to address  
23    the preliminary injunction hearing with affidavits and  
24    exhibits and requests for findings and rulings and a  
25    brief that is -- where the requests are tied to the



1 affidavits and exhibits, and if necessary we could, and  
2 the parties would agree, I'd be willing to take some  
3 proffers at the hearing, but if there's some desire to  
4 put on testimony, I need to know about that.

5 MS. EDWARDS: Your Honor, this is Elizabeth  
6 Edwards. We're happy to proceed in that fashion without  
7 live testimony, but we will have a Tyco witness  
8 available should that, you know, become necessary.

9 THE COURT: All right. Anybody else?

10 MR. SHWARTZ: Your Honor, it's a little hard  
11 to know what if any live testimony we might want without  
12 first seeing the proposed findings.

13 THE COURT: Well, if you want to agree to  
14 extend the temporary restraining order, you certainly  
15 have the ability to do that. If you want more time, you  
16 and Ms. Edwards can agree to it and propose that I  
17 continue the hearing for a different date, I'm willing  
18 to do that.

19 MR. SHWARTZ: No, I'm not asking you to extend  
20 the TRO, your Honor, I'm just trying to be responsive to  
21 your question today.

22 THE COURT: Well, I can't give you anymore  
23 time to react to her findings and rulings.

24 MR. SHWARTZ: That's fine, your Honor, we'll  
25 receive them on Friday and if we -- and we'll be

1 prepared to speak to that when we're before your Honor  
2 on Monday at the hearing.

3 THE COURT: All right, that's the way we will  
4 proceed, then. Again, I strongly urge the parties to  
5 consider dealing with each other in a reasonable and  
6 practical way because there are solutions to this  
7 problem that could leave both parties reasonably  
8 satisfied if the parties were willing to pursue them.  
9 The approach that I will take at a preliminary  
10 injunction hearing is to give whatever relief Tyco is  
11 entitled to as a matter of law. If it's not entitled to  
12 relief, I won't give Tyco any relief. It's sort of an  
13 all or nothing proposition and it doesn't seem to me  
14 that the parties really would like to have an all or  
15 nothing resolution of this matter at the preliminary  
16 injunction stage, but if you leave me no choice but to  
17 act, that's what I'll do.

18 So I'll look for the findings and rulings by  
19 5:00 on Friday, and we'll plan to proceed on affidavits  
20 and exhibits and argument on Monday and we'll go from  
21 there.

22 Ms. Edwards, I think you should understand  
23 this, however, and I'm going to make this clear to  
24 people at the telephone conference in which everybody is  
25 involved, this case, this Tyco MDL is coming to an end,

1 and my plan, unless somebody can show cause why I  
2 shouldn't do it, is after I resolve the preliminary  
3 injunction in this matter, is to relatively quickly  
4 transfer the Tyco plaintiff cases back to the district  
5 from which they came. The issues that are raised in  
6 this matter seem to me to be quite different than the  
7 issues that I'm dealing with in the other cases, the  
8 legal standards are obviously different, there's, in my  
9 mind, a substantial uncertainty as to how the New York  
10 Court of Appeals will ultimately apply the faithful  
11 servant doctrine. It seems to me, if I were the judge  
12 that were going to handle the case beyond the  
13 preliminary injunction stage, I would give serious  
14 consideration to certifying the issue to the New York  
15 Court of Appeals to get a better guidance from the court  
16 as to how that doctrine applies, and I don't see any  
17 real reason to keep the case here any longer, so that's  
18 my current thinking about it. Do you have any response  
19 on that?

20 MS. EDWARDS: Your Honor, I think you're  
21 exactly right, that we are getting to the time when it  
22 would be appropriate to transfer the case back.

23 THE COURT: Yeah, I think a New York judge  
24 should be handling these questions that involve  
25 primarily New York law, in my view, and that court can

1 make a decision about whether a certification to the New  
2 York Court of Appeals is warranted. If this were under  
3 First Circuit law, First Circuit law would be causing me  
4 to give very serious consideration to certifying the --  
5 certifying the questions that I have about the way the  
6 doctrine applies in New York, but I have to do the best  
7 I can with it at the preliminary injunction stage, and I  
8 will.

9 Okay --

10 MR. O'MULLAN: Your Honor?

11 THE COURT: Yes.

12 MR. O'MULLAN: This is Mike O'Mullan. I  
13 represent the New Jersey plaintiffs.

14 THE COURT: Yes.

15 MR. O'MULLAN: And I just wanted to  
16 participate in the call today and let you know that the  
17 reason that we filed papers to join in Tyco's motion is  
18 because while we recognize that the restraints against  
19 Kozlowski's transfer of assets protect everybody since  
20 they preserve assets from dissipation, we wanted to make  
21 clear to the court that we felt that we were similarly  
22 situated with Tyco in the sense that we also have  
23 equitable claims to assert in these assets, and that was  
24 the purpose of our having filed those papers.

25 THE COURT: All right, I appreciate that. I

1     should have acknowledged your interest here. I didn't  
2     -- I can't remember, you filed -- did you file a motion  
3     to join in the relief Tyco is seeking?

4                 MR. O'MULLAN: That's how it was captioned,  
5     your Honor.

6                 THE COURT: Why don't you plan on being  
7     represented at the hearing Monday, then, if you have  
8     anything to add to what Tyco's saying. I assume you  
9     will probably plan to rely principally on Tyco to make  
10    the case for the preliminary injunction.

11                MR. O'MULLAN: I think that's probably  
12    correct, your Honor, and it's not our objective to  
13    further burden the process, but we did want to be part  
14    of it.

15                THE COURT: Okay, I understand.

16                MR. SHWARTZ: Your Honor, this is Robert  
17    Shwartz. Just in terms of trying to explore the  
18    practical solution here, I'm not sure whether talking to  
19    Tyco's counsel alone is going to be sufficient given New  
20    Jersey and I think the seven opt-outs expressed interest  
21    in also restraining Mr. Kozlowski's assets because Tyco  
22    is seeking to restrain I think something like  
23    \$505,000,000. I don't know what the other parties want,  
24    but trying to find something practical is even more  
25    difficult under those circumstances. I'm open to any

1 suggestions that anyone wants to make.

2           THE COURT: Yes, well, I can offer this  
3 suggestion, okay. Tyco has a strong adversarial  
4 relationship with Mr. Kozlowski. They've been a  
5 vigorous litigant actively attempting to protect its  
6 rights. If Mr. Kozlowski can come up with some kind of  
7 solution that satisfies Tyco on an interim basis, the  
8 court is highly likely to endorse any kind of solution  
9 that you can come up with that would be satisfactory to  
10 Tyco. Of course I'll hear from whatever the other  
11 litigants have to say about it, but Tyco's taken the  
12 lead here, they've been aggressive in pursuing the  
13 matter. I have no reason to believe they wouldn't do  
14 everything possible to insure that the potential for  
15 recovery against Kozlowski is preserved to the maximum  
16 possible extent, so if you worked out something with  
17 them, I'm sure that you would then take it to the New  
18 Jersey plaintiffs and to the opt-out plaintiffs and that  
19 they would be highly likely to find it satisfactory, and  
20 in the event that they were not, the court would be  
21 inclined to give substantial deference to any agreement  
22 that had been reached along those lines.

23           So I would suggest certainly don't cut anybody  
24 out of the process, but if Ms. Edwards is willing to  
25 deal with you, deal with her, see what you can work out,

1 and bring it to the other people and see if you can get  
2 them to agree, and if you can't, ask for a telephone  
3 conference, let me know what you have in mind, I'll hear  
4 what everybody else has to say about it and we'll see if  
5 we can get this thing resolved at least on an interim  
6 basis because nobody, I don't think anybody here wants  
7 to deny Mr. Kozlowski the opportunity to bring to a  
8 conclusion his divorce proceedings. That's not what  
9 this is about. It's about making sure that the  
10 interests that Tyco has in recovering against Mr.  
11 Kozlowski are protected and that the interests that the  
12 other parties may have in recovering against Mr.  
13 Kozlowski are protected, and there has to be some  
14 practical way to satisfy those concerns while still  
15 allowing this divorce proceeding to be brought to a  
16 conclusion in a way that's satisfactory to Mrs.  
17 Kozlowski. I just have to believe that there are  
18 practical ways to deal with it. So I would hope that  
19 you try to pursue those matters and see what you can  
20 work out.

21 But if you don't, then show up on Monday and  
22 I'll look for the proposed findings and rulings, a  
23 memorandum of law. If Mr. Kozlowski wants to file  
24 something on Friday, I'll look at that over the weekend  
25 too. If not, come to the hearing with whatever you want

1 me to look at and consider because I'm likely to rule  
2 from the bench on Monday on the preliminary injunction.

3 MS. EDWARDS: Your Honor.

4 THE COURT: Yes.

5 MS. EDWARDS: This is Elizabeth Edwards.  
6 There's one additional matter. We don't have a date by  
7 which we will get discovery from Mr. Kozlowski, and we  
8 would need that in order to incorporate what they learn  
9 there into our filing on Friday.

10 THE COURT: All right, what -- refresh my  
11 memory, Ms. Edwards, as to what specifically you feel  
12 you need before Friday.

13 MS. EDWARDS: Basically discovery as to the  
14 extent of his assets, and I heard his counsel today  
15 saying that there had not been any transfers other than  
16 what we've heard about.

17 MR. SHWARTZ: Haven't been any transfers to  
18 Mrs. Kozlowski or in connection with the divorce other  
19 than the ones that we've previously identified to your  
20 Honor and to counsel.

21 THE COURT: So that means obviously the thing  
22 he's left out is other transfers of ordinary course of  
23 business expenditures. What they are, we don't know.

24 MR. SHWARTZ: Your Honor, I don't mean to be  
25 -- I'm not trying to be in any way coy. I understood



1 your Honor's order specifically permitted those types of  
2 transfers to meet bills and expenses in the ordinary  
3 course.

4 THE COURT: I know. I just wanted to be clear  
5 what you were not -- what you were saying and what you  
6 weren't saying. You've got a lot of money out to Mrs.  
7 Kozlowski between the time the New York injunction was  
8 lifted and the time that mine was imposed, but you  
9 haven't violated my injunction since then. That's what  
10 I hear you saying.

11 MR. SHWARTZ: We have not violated your  
12 Honor's TRO at any time.

13 THE COURT: Yeah. So that means you haven't  
14 given anything to Mrs. Kozlowski, but you have  
15 potentially made ordinary course of business  
16 expenditures that are unrelated to the divorce matter.

17 MR. SHWARTZ: We're in the process of trying  
18 to get our handle on that, your Honor. We don't control  
19 those and we're in the process of trying to learn about  
20 them, but --

21 THE COURT: I can't believe that the situation  
22 that his -- his financial situation is so complex that  
23 you don't -- can't get in touch with the person that can  
24 tell you exactly what he's got, where it is, and what  
25 he's spending it on.

1                   MR. SHWARTZ: We have been in touch with those  
2 people and we're in the process of assembling the  
3 information and documents to comply with the discovery  
4 order that your Honor issued on Friday.

5                   THE COURT: All right, how about the end of  
6 the day Wednesday?

7                   MR. SHWARTZ: I will try to do that. I'm  
8 waiting to hear back from the people I spoke to this  
9 morning, but we will do everything we can to get it by  
10 the end of Wednesday.

11                  THE COURT: All right, so if there's a problem  
12 with that you try to work it out with Tyco's counsel,  
13 and if you can work it out and get it in a little later  
14 than that or you have a satisfactory excuse that Ms.  
15 Edwards can live with, that's fine with me, and if you  
16 otherwise feel you can't comply by the end of the day  
17 Wednesday and you haven't been able to satisfy Ms.  
18 Edwards as to why you haven't been able to comply and  
19 you want some additional time, call my clerk and ask for  
20 a telephone conference, set out your reasons, and if you  
21 have a good reason, then obviously I don't want you to  
22 do something that you can't -- that you just simply are  
23 unable to do. So if you're running into some kind of a  
24 problem and you have a good justification and you can't  
25 get Ms. Edwards to agree, then ask for a telephone

1 conference, I'll hear you out, and if it's reasonable  
2 I'll give you some more time on that. Okay?

3 MR. SHWARTZ: Thank you, your Honor.

4 THE COURT: All right, anything else anybody  
5 wants to take up with me on the TRO preliminary  
6 injunction?

7 All right, and I haven't gotten any kind of  
8 pleadings from Mrs. Kozlowski's counsel, but you're  
9 welcome to attend the hearing on Monday as well. I  
10 certainly am not trying to keep you out of this process.  
11 I simply didn't feel that I could include you and give  
12 you status as an intervenor when you haven't sought that  
13 status.

14 MR. MARKS: Judge, it's Jason Marks. Thank  
15 you for the opportunity to participate. We will be  
16 filing, if we haven't already, a motion to intervene so  
17 that we will be allowed to formally participate in  
18 what's going on. Obviously all of this implicates Mrs.  
19 Kozlowski and the agreed upon terms that she reached  
20 with Mr. Kozlowski, and I'm glad I was able to  
21 participate, I now have a much better sense of the  
22 direction of this preliminary matter between Tyco and  
23 Mr. Kozlowski. We will be moving to intervene. You had  
24 asked that Tyco and Mr. Kozlowski's counsel reach out to  
25 one another to try to formulate a reasonable resolution.

1 I suspect that they are going to need Mrs. Kozlowski's  
2 participation in that discussion without getting into  
3 all of the issues which are raised by virtue of the TRO  
4 as it affects the marital settlement agreement reached  
5 in Florida. There are a number of moving parts which  
6 need to be addressed. Now whether they need to be  
7 addressed before Monday's hearing remains to be seen.  
8 I'm not so sure that they do, and depending on the  
9 outcome of Monday's hearing would depend on Mrs.  
10 Kozlowski's further involvement in the matter.  
11 Obviously if a preliminary injunction is entered and it  
12 impacts the Kozlowskis' ability to comply with the  
13 Florida court's final judgment, then we're going to have  
14 to address those issues and we will get in contact with  
15 the court and the appropriate parties in order to be  
16 able to do that, but right now we're in a sort of wait  
17 and see posture depending on the outcome of Monday's  
18 hearing, but I did want everyone who's participating in  
19 this phone call today to know that Mrs. Kozlowski has or  
20 will be today filing a motion to intervene in the  
21 action.

22 MS. CARROLL: Right.

23 THE COURT: All right, that's fine, I'll look  
24 for that and if you are granted intervenor status, then  
25 we'd welcome your participation. Whether you're granted

1 intervenor status or not, it seems to me that if Tyco  
2 and Mr. Kozlowski want to resolve this matter on an  
3 interim basis, that they would need to work with Mrs.  
4 Kozlowski in doing so. It seems to me, and I don't -- I  
5 haven't studied the filing describing the terms of the  
6 divorce settlement, but I would imagine that there are  
7 certain assets or matters that Mrs. Kozlowski would want  
8 to have taken care of right away but other things that  
9 probably could wait a few months without causing her any  
10 real harm. I don't see why titles to property would  
11 need to be -- would need to pass immediately in order to  
12 address Mrs. Kozlowski's immediate concerns. There have  
13 to be ways in which the parties could agree that certain  
14 monies could be transferred to her immediately, that  
15 other things could remain in Mr. Kozlowski's name while  
16 these other issues are worked out. If I had lawyers  
17 that were willing to work with each other, I'm confident  
18 you could find a way to resolve these things on an  
19 interim basis, and I would of course encourage Mr.  
20 Kozlowski's counsel and Tyco's counsel to work with Mrs.  
21 Kozlowski's counsel on coming up with some kind of an  
22 agreement that's satisfactory to everybody. I am not  
23 trying to make this difficult for Mrs. Kozlowski. I'm  
24 not trying to prevent Mr. and Mrs. Kozlowski from  
25 finally resolving their divorce. I just need to do it

1 in a way that insures that whatever rights that Tyco,  
2 the New Jersey plaintiffs and the opt-out plaintiffs  
3 have are fully protected, and I would much prefer to  
4 find a way to have this resolved in a way that all the  
5 parties could find it satisfactory, but that can only  
6 occur by way of agreement rather than by an order  
7 imposed by the court, so --

8 MS. CARROLL: Your Honor.

9 THE COURT: Yes.

10 MS. CARROLL: This is Laura Carroll, also one  
11 of Mrs. Kozlowski's attorneys. Mr. Marks and I have  
12 prepared a motion to intervene and the only thing we  
13 were waiting on was determining how to confer with all  
14 the relevant parties to see if there was any objection  
15 to her intervention. I didn't know if it was  
16 satisfactory just to have the assent of Tyco's attorneys  
17 and --

18 THE COURT: I'm not in -- I don't need you to  
19 get the assent of people that haven't expressed an  
20 interest in this matter and so I think Tyco, the New  
21 Jersey plaintiffs, the opt-out plaintiffs are the only  
22 groups that I know that have expressed an interest in  
23 this particular matter, so if you file a motion for some  
24 kind of intervention for the limited purpose of  
25 addressing this preliminary injunction and they don't

1 object, you shouldn't have any problem with me.

2 MS. CARROLL: Okay, well, we will do that,  
3 your Honor, and I will also, just to give people a heads  
4 up, one of the difficulties we've had of course is  
5 everything's been filed under seal relevant to the TRO  
6 and preliminary injunction, so we will be requesting, if  
7 and when our motion to intervene is allowed, that we  
8 promptly be given access to what's been filed because,  
9 you know, we're guessing as to what's being said and  
10 represented, but of course we have no way of knowing  
11 exactly until we see the papers, then we can formulate  
12 an appropriate response.

13 THE COURT: I don't think you should have a  
14 problem. If they don't object to you intervening, then  
15 you should be able to see the filings.

16 MR. MARKS: Judge, it's Mr. Marks again.  
17 Given the short time frame between now and the briefing  
18 schedule and the discovery schedule which has been  
19 treated by this phone call, perhaps with everybody on  
20 the phone we could kind of cross these two bridges right  
21 now.

22 THE COURT: I don't want to put pressure on  
23 them. Give Ms. Edwards a call right after this is over.  
24 Give counsel for Mr. Kozlowski a call right after.  
25 You'll be able to get a response from them quickly. I

1 just don't want to force them to do it on the spot here.

2 MR. MARKS: Okay.

3 THE COURT: All right? Anything else? All  
4 right, Mr. Kozlowski will make the discovery to the  
5 extent it's possible to do so by the end of the day on  
6 Wednesday. Tyco will file a memorandum and proposed  
7 findings and rulings citing to affidavits and exhibits  
8 by the end of the day on Friday, and any -- the parties  
9 will either assent to the request for intervention or on  
10 an expedited basis make their views known with respect  
11 to the motion for intervention. In any event, I assume  
12 that Mrs. Kozlowski will be represented at the hearing  
13 on Monday, but if she's going to move to intervene,  
14 there's no objection, I would hope that parties would  
15 let them know and the court know as soon as possible on  
16 that.

17 All right, anything else? Okay, thank you,  
18 I'll see you on Monday.

19 ALL: Thank you, your Honor.

20 (Adjourned at 2:40 p.m.)

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C E R T I F I C A T E

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I, Sandra L. Bailey, do hereby certify that

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the foregoing transcript is a true and accurate

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transcription of the within proceedings, to the best of

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my knowledge, skill, ability and belief.

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10 Submitted: 10/23/08

/s/ Sandra L. Bailey

SANDRA L. BAILEY, CSR, CM, CRR

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